

**Before the
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding on Motion of the Commission to Examine)	
Issues Related to the Transition to Intermodal)	Case 05-C-0616
Competition in the Provision of Telecommunications Service)	

Comments of the New York Coalition of Rural Independent Telephone Companies

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The New York Coalition of Rural Independent Telephone Companies (the “Coalition”),¹ pursuant to the “Order Initiating Proceeding and Inviting Comments” (the “Order”) of the New York Public Service Commission (the “Commission”) on June 29, 2005 and the “Procedural Ruling” issued July 13, 2005 (both issued in the above-captioned proceeding), hereby submits these comments in response to the Commission’s “broad review of our telecommunications policies, practices and rules in light of the fast changing telecommunications environment.” Order at 4. The Coalition appreciates the Commission’s interest in proactively addressing the regulatory framework under which each Coalition member operates, and, with that foundation, provides these comments.

As the Commission is aware, each Coalition member provides high quality service at reasonable rates within the rural areas of New York. The operating challenges confronting the Coalition members in providing quality service in higher cost to serve, lower density areas, in turn, have resulted in Commission policies that ensure the continued advancement of universal service. The advancement of universal service, in the Coalition’s view, is and should be of paramount importance in the Commission’s efforts in this proceeding. To this end, the Coalition agrees that the advent of the new era of competitive service alternatives within each of the Coalition members’ service areas requires change in portions of the “asymmetrical aspects of current policies, practices and rules” as they are applied to the Coalition members. *Id.* At the same time, however, each Coalition member understands and appreciates the

¹ The companies included in the Coalition are listed in Attachment A.

need for regulatory oversight of telecommunications and their respective universal service provider obligations within the industry.

The need to address the two concepts of competition and universal service in conjunction with each other was recognized by Congress in the 1996 revisions to the Communications Act of 1934, as amended (the “Act”). In the Act, Congress created a hierarchy of interconnection obligations under Section 251 and established explicit universal service principles in Section 254. The Coalition recognizes the potential tension created by these concepts but submits that “even-handed” regulation can coexist provided that the primary objective is to ensure that universal service is attained and advanced in the rural areas of New York. Accordingly, the Coalition members request that the Commission begin the process of developing a comprehensive state universal service policy, including a permanent State Universal Service Fund (“SUSF”) that can adapt to the changing market that prompted this investigation in the first place.²

These comments are organized as follows. In Section I, the Coalition provides its overall position on the issues relevant to the Coalition members that were raised in the Order.

Thereafter, in Section II, the Coalition provides its responses to specific issues identified in Appendix A of the Order upon which the Commission has requested comments. Consistent with the Procedural Ruling, the Coalition reserves its right to comment on Staff’s “white paper” and all issues addressed therein. *See* Procedural Ruling at 2.

² The Commission established the general parameters of a funding mechanism in Case 02-C-0595 for a limited group of companies that are, for the most part, the Coalition members. Since the Commission is now seeking comment on the need for the establishment of a permanent, broader-based fund, the Commission no longer believes that the triggering events associated with a similar investigation as contained in Case 02-C-0595 are necessary. With the significant reduction of access minutes and the revenue derived from those services, the migration of minutes to wireless companies, and the availability of Voice Over Internet Protocol (“VoIP”) providers, coupled with the uncertainty of the traditional regulated revenue streams that the Coalition members have relied upon to advance universal service and network/infrastructure, the Coalition respectfully submits that the issue is not whether a SUSF is necessary but when. Accordingly, the establishment of a policy framework that provides for the establishment of the SUSF as an integral component of the regulated recovery of the Coalition members in this proceeding is an absolute necessity.

I. SUMMARY OF POSITION ON RELEVANT ISSUES

A. Universal Service, the Primary Goal of Regulation

The Coalition believes that the primary goal for regulation is the availability of high quality universal service at all times at rates that are just, reasonable/affordable and comparable to all end users. To fulfill this obligation and serve as a “Carrier of Last Resort” (COLR) it is critical to maintain (*i.e.*, invest, upgrade and perform needed routine and repair maintenance) a high quality reliable infrastructure for all users. In order to maintain such infrastructure at affordable rates, a regulatory framework must allow the COLR companies necessary revenue recovery through appropriate rate designs and flexibility, including a SUSF specifically designed for COLR companies.

The facts upon which the Coalition members’ operations are based support this overall framework and the need to ensure that this proceeding advances universal service within the rural areas of New York. These facts, in the Coalition’s view, should not be subject to dispute.

Fact 1: The Coalition member companies provide an array of local telephone services in areas of the State of New York where, in the absence of an appropriate regulatory framework and resulting rate design, the level of telecommunication services and the rates charged for those services would not be comparable to service levels and rates charged for similar services in urban areas of the State.

Fact 2: Under existing law and regulation at both the federal and state jurisdiction there exist policies that recognize that the telephone network plant and expenses associated with the provision of telecommunications services are utilized in the provision of both interstate and intrastate services. Each

Coalition member has established interstate and intrastate rates in accordance with the rules and regulations established by the Federal Communications Commission (“FCC”) and the Commission.

Fact 3: The distinction in the cost of providing service in urban and non-urban areas has long been recognized by federal and state regulators. The recognition of this fact is reflected by the policies that are currently in place and the basic facts that underlie these policies. Specifically, the policies in place at both the interstate and intrastate jurisdiction implicitly recognize the value of the rural telephone company networks to all customers on the public switched network (*e.g.*, the value to a customer residing in an urban area that can reach and be reached by customers in the rural area).

Fact 4: As reflected by changes in the interstate rate design implemented by the FCC,³ the overall review of intercarrier compensation by the FCC,⁴ and the Commission’s action with respect to depooling, as well as other historic changes in intrastate and interstate rate design for rural carriers, regulators have always recognized that the implementation of changes in rural company rate design brought about by overall changes in technology

³ The Commission is well aware of the changes in the Coalition member’s interstate exchange access rate designs arising from the FCC actions addressing the Multi-Association Group proposal. These actions resulted in cost recovery associated with certain access rate elements to be shifted to the *federal* universal service fund. *See generally, In the Matter of, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal State Joint Board on Universal Service, Fifteenth Report and Order in CC Docket No. 96-45, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Twenty-Second Order on Reconsideration and Report and Order in CC Docket Nos. 98-77 and 98-166, CC Docket Nos. 00-256, 96-45, 98-77 and 98-166, 16 FCC Rcd 19613 (2001); see also 47 C.F.R. §§54.901-54.904.*

⁴ *See In the Matter of Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 05-33, released March 3, 2005.*

or market conditions must be balanced against the requirements to: 1) provide rural carriers with a continued meaningful opportunity to recover their costs; and 2) maintain basic service levels and rates that are comparable to those charged in urban areas.

Fact 5: The Coalition members have traditionally relied upon exchange access minutes of use, federal universal service fund disbursements and external state mechanisms and policies as integral components of their overall *intrastate* regulated rate design. *See* Exhibit I. This policy recognized the value created by the rural provider's network. The existence of competition does not diminish this value it increases it. All service providers rely on that network to terminate their end user traffic, and for traditional toll products as well as new services like VoIP, originate end user traffic. This use and that of the Coalition members' own end users, coupled with properly applied network reliability and quality of service requirements, makes the rural infrastructure deployed by the Coalition members a fundamental element of a cohesive universal service policy in the State of New York.

B. Status of Competition

It is clear that market forces and technology have created new competitive service offerings within the rural areas that the Coalition members serve. Whether such offerings are available through facilities-based providers (such as wireless companies and other broadband providers such as Cable Television operators) or "service-based" providers (such as those entities that provide VoIP), competition for the traditional voice and data services offered by the

Coalition members exist. This entry has not taken the traditional course that many may have anticipated or imagined, such as the one-for-one loss of an access line. Rather, the competition has resulted in access minutes of use being diverted.

Competition exists in rural areas of New York and the Commission need not utilize simple number counts to conclude otherwise. *See* Order at 8-9. Rather, the facts as they exist today demonstrate the existence of such competition as there are multiple wireless carriers and alternative broadband services providers in the Coalition members' operating areas. *See* Exhibits II and III.

For example, if competition was not present in the Coalition members' service areas, why would there be a reduction in access lines and exchange access minutes? *See* Exhibits IV and V. With state and federal policies that encourage the deployment of broadband by the Coalition members as well as others, why would one need to corroborate the existence of VoIP providers capable of using any broadband connection to offer competitive voice products? The mere availability of broadband should suffice.

C. The Competitive Metrics Developed for and Applicable to Verizon New York, Inc. Should not be Applied to the Coalition Members

The Order suggests that the metrics developed for the larger telephone companies in the State of New York (predominantly Verizon New York, Inc. ("Verizon")) may be formalized in this proceeding. *See* Order at 9, 14, Appendix A at 2. While such metrics may be relevant to Verizon, those metrics are not a fit for the Coalition members who, unlike Verizon, serve exclusively the higher cost areas of New York. Use of the Commission's metrics actually may mask the presence of competition in the form of both facilities-based and service-based offerings in the Coalition members' service areas, particularly since the metrics discussed in the Order were, as explained by the Commission, developed for Verizon. *See id.* at 8. The limited

customer base and low density exhibited in rural areas of New York makes the existence of one competitor within a Coalition member's service area sufficient justification for proactive regulatory change. The Coalition members do not have the significant end user customer base across which changes in market share and entry can more readily be absorbed. Once competition is present in the Coalition member's service area, the traditional regulatory revenue sources and reliance upon them erodes. This erosion, in turn, creates the need for a proactive and comprehensive regulatory approach to ensure the continuation of ubiquitous rural connectivity for all service providers.

D. A Need for a State Universal Fund for the Carrier of Last Resort Within the Rural Areas of New York is Good Public Policy

As the Commission considers and evaluates future direction of a regulatory framework within the State in this proceeding, the public interest would be served by the Commission recognizing the importance of and need for policies that encourage the deployment and maintenance of rural infrastructure and the continued advancement of universal service within the rural areas of the State of New York. These policies, in turn, should have as their objective the creation of a stable financial and recovery platform from which continuing enhancements in the rural areas the Coalition members serve can be made. Infrastructure is at the heart of the universal service objectives and the policies that have governed and directed the Coalition members' respective operations. This infrastructure is used to provide all services – residential and business “POTS,” long distance exchange access, and, as deployment of broadband continues, the backbone network used by new (and likely unregulated) service providers. With the establishment of the stable environment for investment that the Coalition members seek, the Commission can avoid significant questions regarding the future availability of quality connectivity in the rural areas that exists today.

The Coalition members' position is grounded in reality and a level of historical commitment to rural New York that is unmatched. The Coalition members have accepted their COLR obligation within their service areas, and the regulatory framework that promoted the deployment of the network coupled with the opportunity to recover the costs of such networks. Application of this traditional framework has resulted in a reliable network, deployed with redundant critical systems (such as back-up power sources) that provide high quality service in a manner consistent with law enforcement and national security requirements, along with "24/7" repair capabilities. Today, the quality of service afforded by this network is second to none. However, the erosion of traditional regulated revenue sources requires a new regulatory framework that includes the establishment of a SUSF. The SUSF, in turn, would be available to those entities that agree to continue and advance the existing universal service commitment through the deployment, maintenance and operation of a high-quality network and infrastructure in rural New York.

An absolute truism exists – the predominant network costs do not go away when revenue streams and customers they represent leave a Coalition member's network. As the COLR, the Coalition member is still required to maintain the entirety of its network and the upgrade of the network when such upgrades are warranted. Absent the establishment of policies that recognize this truism, however, it is inevitable that the Coalition member's network will experience degradation as investment and maintenance dollars are reduced as company-generated regulated revenue streams erode. This spiral, in turn, may adversely affect economic development within rural communities either by the resulting loss employment and/or an inability to rely upon the existing network for the necessary telecommunications services that businesses require. These

types of results, the Coalition members respectfully submit, are contrary to the notions of universal service under which the industry should operate.

There is an inevitable tension then between competition on the one hand and universal service on the other. The availability of regulated recovery from the SUSF will provide the stability that encourages infrastructure deployment in the higher cost to serve rural areas served by the Coalition members. That result encourages universal service and is good for both rural and urban consumers alike. The ability to call and be called anywhere in the State of New York is the hallmark of universal service and the basis upon which network deployment has proceeded. The rural infrastructure, in turn, will afford competitors the opportunity to terminate their end user traffic and, for traditional toll products as well as new services like VoIP, originate traffic as well.

The stability that the Coalition seeks regarding their infrastructure deployment and investment is nothing new. The stability provided by recovery available through the SUSF, coupled with a regulatory framework that provides an opportunity for a Coalition member to respond promptly to consumer needs, will ensure the foundation necessary to continue investment in the network, including the deployment of new technologies.

To reduce pressures for SUSF disbursements, the Coalition members also believe that regulatory requirements that encourage and provide for prompt, flexible, and equal market responses by all providers should also be established. This effort, in turn, will provide the platform for rational competition based on the creation of an environment that does not hamstring one entity's ability to respond promptly to customer service needs. At the same time, the flexibility to allow the Coalition members to utilize market-based pricing for services while ensuring reasonably comparable local rates will provide them the opportunity to retain revenues

which might otherwise be lost, thereby reducing the need for external funding while providing the consumer the benefits of competitively priced alternatives. By way of example only, new Commission policies that result in streamlined tariff notice periods and allow for the offering of bundled and/or promotional packages and discounts may very well assist in stemming the erosion of regulated revenue that the existing regulatory lag creates, if not encourages. These types of “level playing field” regulatory requirements will promote timely market responses rather than regulatory arbitrage, thereby allowing the Coalition members the opportunity to respond through the timely provision of service to end users. This flexibility will inure to the benefit of consumers in rural New York by making available to them packages of existing services as well as new service offerings that are priced to reflect the competitive market realities within which the Coalition members operate.

The Coalition members recognize that the Commission’s oversight of several service providers (such as VoIP providers) remains uncertain and, potentially, beyond the Commission’s control. Thus, a re-evaluation of any “level playing field” policy will be required as these existing uncertainties regarding the Commission’s jurisdiction are resolved.

E. Conclusion

Accordingly, as the Commission moves forward with its consideration of the issues raised in the Order, the Coalition members respectfully request that any resulting policies err on the side of universal service. This is particularly true as the Commission fashions policies applicable to the rural areas that Coalition members serve. Competition is not the end in and of itself in the higher cost to serve rural areas of the Coalition members. The Commission has traditionally (and properly) recognized the need for rational and stable recovery mechanisms available to the COLRs operating within the rural areas of New York. That policy is even more

critical as the Commission and industry move forward in an environment that seems to encourage “free rides” on the infrastructure that exists today. Those free rides create both costs on the network and pressures that further erode traditional regulated revenue streams. The reality is that the end users/consumers of the Coalition members are not the only users of the Coalition members’ respective networks. Rather, those networks are used by other facilities-based or services-based companies that provide competitive service offerings in the Coalition members’ service territories. The SUSF, coupled with streamlined regulatory procedures that provide a Coalition member the opportunity to provide market service offerings promptly to meet existing or expected consumer needs, will provide the opportunity for all users to continue to rely upon the Coalition members’ respective infrastructure and expect the same high quality that exists today. And that result, in the Coalition’s view, advances the public interest and universal service and is the critical underpinning of the public interest that this proceeding should advance.

II. RESPONSES TO COMMISSION ISSUES

As indicated above, the Commission has identified a host of issues aimed at addressing the need for a regulatory paradigm that reflects the ever increasing pace of telecommunications market place change. The Coalition hereby provides these responses to the issues using the grouping and numbers provided in the Order.

A. Consumer Protections

1. In view of the proliferation of competitive alternatives, is it appropriate for the Commission to relax some of its traditional consumer protections applicable to wireline companies?

Yes. Initially, the Coalition recommends that the Commission first decide what consumer protections are necessary to ensure a sound public policy result for all

telecommunications services provided in New York. *See* response in Section II.A.2, *infra*. Once these matters are identified, the Coalition believes a separate proceeding should be initiated to review each current requirement and examine new ones to determine their efficacy, cost to carriers, and benefits to the public. Once a set of fundamental consumer protection policies is established, the implementing rules should apply *equally* to all service providers, regardless of technology or current regulatory status.

The Coalition submits that this approach is rational and prudent. The Commission would ensure that the more burdensome requirements that apply solely to wireline companies are eliminated while, at the same time, implementing new provisions that would subject all of the other types of carriers to an equal, but potentially higher, degree of consumer protection. *See also id.*

2. Are there core consumer protections (e.g., slamming, cramming, termination notices, contract disclosures) that should be enforced by the Commission, notwithstanding the existence of competitive choices? Should a set of core consumer protections apply to wireless and VOIP/cable telephony, as well as traditional wireline?

Yes, as discussed above, there should be a core set of consumer protections. The Coalition does not believe that competition in New York or market forces created by that competition would necessarily address *all* necessary consumer protections. Thus, proper exercising of regulatory oversight will be required, as well as requirements to address these core protections will remain necessary to ensure the achievement of the public interest.

As stated in Section I, *supra*, there are also core universal service objectives to be served by public policy, now and in the future. The public policy interest in assuring that consumers are treated fairly will remain and will not be solely or totally addressed by market forces. As discussed above, the Coalition believes that a separate proceeding to examine a core list of

specific consumer protection objectives and potential rules to ensure the maintenance of these protections would be a prudent course. The core consumer protections adopted by the Commission should be extended to all service providers including wireless, VoIP, and cable TV based services. These carriers enjoy the benefit associated with the use of the public switched network, and it is that network that allows consumers the capability to call each other. Thus, the use of the network and the resulting responsibility of both the facilities-based provider and the consumers that use the network should drive the Commission's policies that would apply consumer protections to all service providers.

3. Does the Commission have a unique role to play in addressing consumer complaints? Should a common forum for the timely handling of consumer complaints be available under the auspices of the Commission? In other words, should the Commission's complaint handling function and the authority to enforce core consumer protections be extended to wireless and VOIP/cable telephony? If so, what should the nature and scope of that function be?

Yes, consistent with the responses provided in Section II.A.1 and 2, *supra*, the Commission should continue to occupy a role necessary to address consumer rights and carrier treatment of consumers. To this end, Commission involvement addressing both consumer and carrier complaints should continue. The Coalition is confident that the Commission can sort through those complaints that are meritless and those that require Commission action. Therefore, a proper balance should be established between the administration of complaints and the continuing need to ensure consumer protections in order to ensure the efficient utilization and expenditure of resources to address complaints, as well as the overall extension of this oversight to all types of service providers on an equal and "even-handed" basis.

4. What impact might municipally owned wire/wireless networks have?

Municipally owned utilities have the potential to present significant challenges with respect to anti-competitive behavior that would disadvantage all other competitors. For example, to the extent that the municipality has taxing authority, there is a risk that the municipality can effectively subsidize its service division with taxpayer dollars, offer services at below cost, and/or effectively discourage any meaningful entry or existence of competitor service providers, all outside of the scrutiny of the Commission oversight and carrier complaints. Similarly, because other competitors must have access to public facilities to install, operate and maintain their networks, municipalities have the ability to "control" this access in a manner that could favor the municipalities' service operation over that of its competitors. Fundamentally, therefore, municipally owned telephone companies raise issues that may very well be antithetical to competitive service providers.

B. Universal Service

1. Do the universal service goals articulated in 1996 remain valid in 2005?

These goals are as relevant and as important today as they were in 1996, if not more so. The Commission's universal service goals follow very closely those that Congress adopted in the Act. It is the Coalition's position that the public policy objectives and principles set forth in Section 254 of the Act are thoughtful and sufficiently flexible to address the ongoing universal service policies for both federal and state policymakers. This flexibility is necessary. As the Commission is aware, there is occurring a shift in the definition of "universal" service away from "plain ordinary telephone service" to broadband access-based services. As such, the definition of what the industry means by universal service will likely also require evolution to recognize this change.

In any event, what has, in fact, changed is the potential for negative revenue impacts on the small local exchange carriers (“LECs”) through access charge reductions, loss of minutes to other service providers, and loss of customers to new entrant local competitors. Individually and collectively, these effects mean that the cost recovery sources for small and rural incumbent LECs will continue to be reduced while the cost to operate their rural networks continue and may increase. These LECs remain effectively the standby providers that are required to step in and provide service when new entrants either fail or refuse to provide service. New entrants can enter and exit the markets, but the incumbent LECs are the failsafe, back-up providers.

Accordingly, as the industry moves forward, and to the extent that service revenues do not reflect the smaller LEC's universal service role as the COLR, then there will need to be new revenue sources that acknowledge the smaller incumbent LECs' roles. The only new revenue source that is available to address these objectives would be universal service dollars. Based on the facts as known, the only real questions are the extent of the necessary SUSF and the timing for the introduction of new universal service program. Absent the SUSF cost recovery mechanism, small incumbent LEC providers will not be able to fulfill their COLR obligations as their revenue and recovery stability is undermined and their (and financial institutions) willingness to continue to commit capital to build, maintain, and evolve networks is second guessed.

It would be imprudent for these carriers to continue to commit dollars if the recovery of their costs is in jeopardy; no one would expect anything different. A smaller incumbent LEC's continued role and public policy contribution as the last resort providers will depend on stable and predictable revenue sources to support the ongoing costs of the networks they build and operate. These networks stand ready to serve all, including the networks and services of their

competitors, and were deployed with redundant critical systems (such as back-up power sources) and to address law enforcement and national security requirements, along with “24/7” repair capabilities.

Accordingly, a stable and predictable set of revenue sources will likely require the addition of a state funded universal service fund component. The SUSF should be established in a manner that ensures that all users of the network contribute to it in recognition that such users benefit from the network’s capabilities for the origination and/or termination of the user’s communications.⁵

Absent such mechanism and compliance with the rate level requirements of Section 254 of the Act – reasonably comparable and just, reasonable and affordable rates for rural areas (*see* 47 U.S.C. §§254(b)(1) and (3)), the erosion of traditional regulated revenues will result in an ever spiraling increase in local rates of a Coalition member, only exacerbating the loss of consumers and, thereby increasing the cost of the network for the remaining users. This result is contrary to the public interest and will be avoided through the establishment of a SUSF funded by as broad a contribution base as possible.

The same objective of establishing the widest possible base of providers upon which contributions to the SUSF would be funded can and should be applied to existing mechanisms like the Targeted Assistance Fund (“TAF”). The availability of 911 and lifeline and link-up advance time-honored universal service and public interest objectives of assuring safety and affordable access to the network. Expanding the contribution base to include all entities that benefit from the existence of these programs and network creates a more equitable funding obligation. Absent expansion of the potential entities making contributions to the TAF, the

⁵ Once the policy is established by the Commission, the Coalition suggests that a compliance working group be established to develop the necessary structure of the SUSF and the day-to-day mechanics as to how the SUSF would operate.

social obligations shouldered unequally by the existing contributors may become greater as the success and use of these programs increase. This result, in turn, distorts any effort to create a “level playing field” and otherwise may be seen as perpetuating non-symmetric obligations between and among service providers that all derive benefit from the existence of the TAF.

2. Our view that “basic service” should be periodically re-evaluated appears appropriate in view of the expanding use of and reliance on high speed and wireless telecommunications capabilities. Does the existing definition of “basic service” remain appropriate in today’s environment?

No, the definition of basic service is evolving. And the policy approaches should be distinct and evolving to address these changes. As stated herein, there is a trend towards broadband, packet-switched services, and the participation by consumers in the economy of New York and the nation as well as the social and political environment will depend on these new service offerings to a greater degree in the future. As such, universal service plans will be needed to keep rates reasonable and comparable and to ensure there are revenue sources that would lead to the investment in networks and the availability of these emerging services.

The Coalition members also note that the ability to communicate on a mobile basis appears to be evolving as a more "universal" need than may have been the case in the past. Accordingly, there may be a separate and distinct policy objective in ensuring reasonable availability of mobile wireless communications in most areas of New York, even in some areas where the costs may be greater. However, the policy objectives to be served by a mobile wireless universal service plan are not the same as those that are relevant to the policy that applies to wireline telephone networks. The Coalition submits that the Commission should recognize this fact and not fall prey to the mistakes created at the federal levels associated with the imprudent universal service policies. For example, at the federal level, a mistake is that

universal service disbursements for mobile wireless services are based on the costs for wireline networks, not the wireless carrier's costs. The objectives are different, and the plans and dollars should be different as well.

3. Although, to date, we have not found a need to establish a universal service funding mechanism to ensure generally affordable rates in "high cost" areas of the state, does that conclusion remain valid as traditional revenue streams are challenged by growing competition, technological advancement, and evolving intercarrier compensation arrangements?

No. As already discussed above, the erosion of traditional revenue sources, through growing competition, technological advancement and changes in intercarrier compensation arrangements, also requires a reevaluation of the previous analysis. There will be a growing need for new forms of universal service funding if traditional cost recovery sources are reduced and if the incumbent rural LECs are expected to remain the last resort universal service providers.

With respect to the Commission's question, however, the Coalition is concerned that its focus is too narrow. The Commission's discussion focuses on the condition of affordability. However, the Coalition maintains that "comparability" of rates is, in effect, a more fundamental and important objective than simple affordability. *See* 47 U.S.C. §254(b)(3). To the extent that telecommunications services provided in high cost, more rural areas are at rates comparable to those that apply in the lower cost areas, then those rates will automatically be affordable. But while a rate that is much higher in a higher cost area may be affordable, it would not be comparable. Accordingly, the condition of comparability should govern universal service policy to the same degree as affordability.

4. What approaches should we pursue to ensure the continued availability of affordable basic telecommunications service to all consumers in New York?

The Coalition submits that the Commission should broaden the base of contributors to the SUSF by including all service providers. As changes are made to revenue sources, there will need to be new plans that support the continuing cost to build, maintain, and operate rural, higher cost networks if rates are to remain affordable and reasonably comparable across the State.

C. Market Power and Regulatory Flexibility

- 1. The basic issue confronting us today is, given the proliferation of intermodal competition and choices for consumers, what is the appropriate role of the regulator in preventing market power abuses? More particularly, is there sufficient actual and potential competition for retail telecommunications service, including residential basic local telephone service, to prevent a firm from raising its price or providing poor quality service without suffering commensurate competitive losses?**

The Coalition recognizes the continuing role of the Commission in ensuring that consumers and the service they receive are not subjected to unscrupulous behavior by service providers. However, contrary to the apparent premise of the question, such behavior is not limited to an entity that may have a greater market share than some other entity. Regardless of market forces that may curtail such activity, including those matters that the Commission raises – poor quality and unreasonable prices - both the formal complaint process and consumer complaint process should be utilized to address any market issues that may be raised. Logic also suggests that if incidents are numerous enough, a general rule prohibiting or circumscribing certain behaviors would be entirely appropriate.

The Coalition respectfully submits that this approach is entirely reasonable and is in the public interest. This approach recognizes the Commission’s proper role in being a “traffic cop” on issues that are raised, without the presumption that the market share automatically brings with the possibility of such behavior. Further, the process ensures proper and adequate due process to

address any market behavior found questionable by other consumers in New York or competing carriers. At the same time, the Coalition's suggestion balances the efficient use and expenditure of Commission, consumer and carrier resources to react to issues when they are raised. In this manner, the Commission is provided the ultimate flexibility to redress behavior in a manner tailored to the conduct at hand.

2. What measure of competition should we consider when determining whether retail pricing flexibility is appropriate? Can the Department's competitive index be used for this purpose?

For the reasons also stated in Section I.C, *supra*, the "competitive index" is not appropriate to be applied to the Coalition members. The entry of one service provider, coupled with the uncertainty of intercarrier compensation issues today, is sufficient to ensure that sufficient pressures exist in rural areas to afford telephone companies the opportunity to demonstrate the pricing flexibility they deem necessary to provide timely and responsive service pricing and packages to consumers.

The Coalition is concerned that a focus solely on the number of competitors and on "competition" is too limited. All service providers should be able to address, in advance, market needs through pricing and service packages in order to meet consumer needs. By allowing this form of consumer-oriented service development and pricing, the Commission will encourage the opportunity for service innovation and pricing to the benefit of all similarly situated consumers in New York. That result, the Coalition submits, is in the public interest.

3. Are the criteria and assigned weights in the Department's competitive index reasonable? In particular, is the VoIP telephone weight reasonable in light of current carrier policies concerning the availability of stand-alone broadband?

Please see response to Sections I.C and II.C.2, *supra*.

4. Can price levels from competitive areas serve as a first level gauge of reasonableness for prices in non-competitive areas?

For the reasons stated in these comments, the Coalition questions the underlying premise that there are competitive and non-competitive service areas in the State of New York. At least with respect to the Coalition members, that premise is inapplicable as service competition and either actual or potential facilities-based competition is present. With this in mind, however, the Coalition conceptually agrees with the Commission's observations that pricing levels between carriers is indicative of what each carrier believes consumers view the worth of that carrier's service offering to be. Yet, with respect to universal service, that "value" must be tempered by the "reasonably comparable" standard found in Section 254(b)(3) of the Act between both access to service offerings in and the resulting service rates between urban and rural areas. *See* 47 U.S.C. §254(b)(3).

5. How do we define competitive versus non-competitive areas/markets?

For the reasons stated herein, the Coalition does not believe this issue needs to be addressed for the geographic areas within which they serve.

6. Should we allow rates in less densely populated areas to increase to their underlying cost levels?

No. The reasonably comparable standard found in Section 254(b)(3) does not permit that result, and prudent public policy supports the same result.

Consumers in rural areas of New York should not be targeted for increased rates simply because the cost to provide service to them may be higher than densely populated areas of New York. A consumer in Manhattan gains benefit from being able to call an end user in the Adirondacks and vice versa. The existence of such calling capability is one of the hallmark principles under which universal service and network deployment has been advanced. To

establish a pricing principle for dial tone that precludes consumers the availability of reasonably comparable priced local service is fundamentally at odds with the public interest in the advancement of universal service and creates potentials for “haves” and “have nots” in an era of ever-increasing reliance on telecommunications.

D. Service Quality

- 1. How should we adapt our service quality regulation to the marketplace realities?**
- 2. Are output-oriented performance measures still valid as a means of informing consumer choices, and, if so, should they be expanded to include all modes (wired and wireless, VoIP and cable telephony)?**
- 3. Should proactive service quality performance oversight and enforcement of whatever breadth be limited to less competitive markets or geographic areas? More importantly, indeed critically, how can this be done in a manner that ensures the overall reliability of the underlying inputs, the interconnected networks themselves?**

The Coalition continues to believe that reporting the results of service provisioning, *i.e.*, the “output,” is the most effective means of ensuring quality service. Reporting on problems surrounding the actual provision of service is a measure readily understandable to the consumer. To do otherwise, may create additional reporting and regulatory burdens, a result that seems in conflict with the elimination of regulatory burdens suggested in the Order.

- 4. Regulatory reform in the area of telecommunications service quality must not compromise the state’s economic well-being, security, or safety. How is this done in other critical infrastructure areas (*e.g.*, transportation), and how do those experiences inform us?**

The Coalition members are not in a position to respond to what other industries do with respect to critical infrastructure areas. Nonetheless, the Coalition agrees that any reform should not compromise the state’s economic well-being, security and safety. Compliance with federal network outage requirements appear aimed at ensuring this result. *See* 47 C.F.R. Part 4, *et.seq.*

These rules are applicable to all providers within the classes of service providers that are noted. Unless there is a demonstration that compliance with these rules does not advance the common interest expressed by the Commission in this issue, the Coalition believes that reliance upon the federal standards is sufficient.

5. Is our performance-centric approach appropriate in an era of intermodal competition, where other service providers (e.g., wireless, VoIP) are not subjected to our regulation?

No. The Commission's complaint jurisdiction is sufficient to address service-related issues when and if they arise. Applying this approach, in turn, promotes an even-handed approach which allows the Commission to monitor the entirety of the New York telecommunications service market and the opportunity to respond to consumer-oriented issues promptly and effectively when they arise.

6. If our service quality regulation and reporting were extended to all modalities (wireline and wireless) and all providers (e.g., VoIP and cellular), what, if any, legal constraints apply to extending basic service quality regulation to all modalities?

The Coalition reserves its right to respond to other parties' view of the law.

7. Should we modify, relax, or eliminate performance-based standards in competitive markets?

To the extent that the Commission determines that the availability of service alternatives will achieve the overall consumer benefits that regulation is, among other things, intended to achieve, the Coalition believes that the modification, relaxation or the elimination of performance-based standards is appropriate. Such action, however, should be accomplished in a manner that is even-handedly applied to all service providers within the market. *See also* Sections II.D.8 and II.D.9, *infra*.

8. **Are performance standards essential to ensure that consumers have access to a reliable, seamless network of networks and, if so, should they be changed?**
9. **Is reporting based on size still relevant? Should we focus our reporting requirements on less competitive markets or geographic areas?**

The Commission ability to monitor services related issues through the formal or informal carrier and consumer complaint process should provide the Commission with the opportunity to monitor and address issues as they arise in a tailored fashion. Absent adopting this approach, the Commission may be perpetuating the very “asymmetric” regulatory result that the Order is intended to address. *See* Order at 4. In light of the market forces confronting the Coalition members, the current standards are not “essential” and the resulting reporting need not be retained for the Coalition members because competitive service opportunities exists within their respective service areas.

10. **Should we continue to allow an exception for carriers that provide service solely by repackaging or reselling another carriers’ service?**

The Coalition submits that there should be no presumption that a “reseller” (which is akin to an entity that is “repackaging” other’s service) is not required to provide information on service quality to the Commission. While the Coalition recognizes that a “reseller” may not have control over the facilities that cause any service dislocations (such as network outages), the ability for the Commission to have information regarding the affected consumers is still a legitimate area of inquiry. As more service-based providers are established, such as VoIP, the ability for the Commission to monitor and track service quality is justified.

11. **Should all carriers be held to a threshold standard for service?**

Yes, for the reasons stated herein.

12. Are the customer trouble report rate (CTRR) measures still reflective of the quality of service provided to consumers?

Yes, for the reasons stated herein.

13. Are there other more relevant measures than the CTRR?

The Coalition reserves its right to respond to other comments addressing this issue.

14. Should a periodic survey of customer satisfaction be used?

To the extent that such survey would not be burdensome to any given reporting entity and assuming that the Commission did not impose unrealistic “return” rates by consumers, the Coalition would not be opposed to investigating and discussing this matter further. As part of the investigation/discussion, however, the Coalition recommends that the Commission make inquiry into whether existing consumer groups are not otherwise addressing this issue independently. If that were occurring, the Commission may find that duplicative effort on its part is not necessary.

In any event, the Coalition submits that the Commission, as part of its review, should also consider the validity of any survey results when its ability to require responses of certain service providers (*e.g.*, wireless providers, VoIP providers) is a significant issue. As before, the creation of new non-symmetrical obligations appears to directly conflict with the “level playing field” objective of the Commission in this proceeding.

15. Is our Public Service Commission (PSC) Complaint Rate Level still relevant?

Yes.

16. Should we maintain and expand our Commendation Program for excellent service?

Yes. Such programs recognize those providers that have demonstrated quality service. Such commendations, however, should then be used as a factor in regulatory decisions affecting

that entity's operations, thus creating additional incentives to maintain the existing superior quality of service levels.

- 17. Parts 602 (Consumer Relations and Operations Management) and 603 (Service Standards) were streamlined in 2000 to better reflect the competitive environment; should these regulations be re-examined in light of the changing market? Is additional streamlining needed?**

To the extent that technological or market changes call into question the continued viability of existing regulations, those regulations should be reviewed. The Coalition would welcome participation in any effort to address such reexamination and streamlining and reserves its right to address specific proposals raised by other parties in this proceeding.

- 18. In 1996, we emphasized our duty to know how the state's telecommunication infrastructure varies by region, how that infrastructure compares with the rest of the world's, and how effective competition is in providing services demanded by consumers. The primary vehicle for gathering this information is our requirement for local exchange carriers (LECs) to submit annual construction budgets. Is this information still needed? If so, should it be modified in some fashion? Are there more relevant indicators that we should monitor? Are capital dollars still relevant or should we only consider benchmarks and outputs? Should intermodal competitors contribute data in order for us to gauge the robustness of telecommunication infrastructure in the state?**

The Coalition members are not opposed to addressing network deployment issues. Reporting should be: (a) provided by all facilities-based service providers; (b) filed after the fact; (c) subject to the ability of an entity to report such information using traditional proprietary/confidential procedures; and (d) tailored to the size of the reporting entity. Focusing on what network has been deployed in lieu of what is proposed to be deployed provides, in the Coalition's view, a better gauge of what infrastructure is present and available to meet the telecommunications services needs of all consumers in the State of New York.

E. Level Playing Field

1. Recognizing that federal law plays a significant role in numbering administration, should the numbering principles referred to above be equally applicable to new, IP-based numbering solutions?

Yes. To the extent that service providers are utilizing telephone numbering resources and allowing the exchange of consumer-initiated voice/data traffic, rational public policy suggests that each such provider's services be governed by the same set of overall objectives/principles. The Coalition understands that the existing status of state oversight is unsettled with respect to certain providers such as VOIP providers. However, the utilization of Internet Protocol as a means of transport of consumer communications is just that – a transport technology. Accordingly, IP-based services should not, presumptively, be considered outside the ambit of Commission's oversight, including compliance with the principles noted.

2. Do we need to implement additional number optimization measures in light of the potential demand for numbers by new competitors?

In addition to the above-stated issue, the Commission also notes a series of sub-issues in the Order.

Is the continued association of geographic locations (e.g., traditional rate centers) with telephone numbers competitively or technically indicated? Should our facilities readiness criteria be applicable to IP-enabled local telecommunications service providers . . .? Do the Carrier-to-Carrier Migration Guidelines . . . need to be amended to reflect intermodal customer migration and number porting realities?

Order at 19, n.22. Therefore, the Coalition's response is provided in response to all of these issues.

The Coalition recognizes the need to ensure proper number resources are available to consumers. Any such policies need to reflect the legal requirements regarding porting, including the fact that service provider porting is the only method of number portability that Congress has permitted (*see, e.g.*, 47 U.S.C. § 153(30)) and the FCC's preeminent jurisdiction over numbering

resource issues. *See* 47 U.S.C. §251(e). Consequently, the extent to which the Commission has jurisdiction to effect policies arising from these issues is uncertain, and, in any event, there appears to be no need to address geographic porting issues.

With respect to the remaining questions, the Commission should consider applying an “even-handedness” to all of its numbering policies to service providers using those numbers. If this focus raises the need for revision to current guidelines, then that matter should be investigated further with the direction and assistance of the industry.

3. **Are the numbers and listing information of IP-based subscribers available generally at reasonable terms, or is this a new bottleneck?**
4. **Are IP-enabled providers able to access the information they require from telephone, cable, and wireless sources to support efficient management of their operations?**

These questions appear directed to IP-enabled providers. Accordingly, the Coalition members reserve their rights to respond to the comments made by such providers as provided for in the Procedural Ruling.

5. **Do gaps in the availability of number portability represent an impediment to choice?**

To the extent there are “gaps” in the availability of porting, they exist because of legal precedents binding upon the Commission or the lack of demand for such porting. At the same time, the increased use of numbers by VoIP providers as well as the aftermath of wireless-to-wireless and wireline-to-wireless porting intuitively suggests that the need to retain one’s telephone number is not as much a consumer concern as once imagined. Accordingly, the Coalition suggests that a legitimate issue exists with respect to whether, in fact, the existence of “porting” impedes customer choice.

6. Are routing and rating information routinely exchanged, or are carriers exerting dominance to obscure the information necessary to ensure appropriate compensation and efficient network management?

This question raises two distinct topics – routing and rating – that will be addressed in turn. With respect to routing, a called party’s serving switch information and network homing arrangement (*e.g.*, homing tandems, switch Local Routing Number, etc.) for that switch is needed in order to ensure proper termination. Such information is readily obtained during direct negotiations for traffic exchange agreements by the carriers involved or from various industry sources that utilize root network information from the North American Numbering Plan Administrator and develop their own network products. Accordingly, the availability of this information is not, in the Coalition’s view, an issue.

At the same time, however, the Commission is correct that concerns exist regarding the exchange of this routing information in an unaltered form between carriers. As the new technologies are developed to provide telecommunications to the general public, the Commission should, to the extent legally possible, ensure that *all* service providers that utilize the “numbering” resources adhere to the standard industry practice of making their network routing available to all other telecommunication carriers. This principle should apply regardless of whether the entity receiving the numbering resources is a telecommunications carrier or not. Information about a physical destination routing point associated with its switching point (*e.g.*, signaling point code of a switch, point of interconnection of both carriers’ network, etc.) for each service provider’s network is essential to properly route calls.

With respect to rating a call it is essential that the telephone number (also referred to as Automatic Number Identification or “ANI”), in conjunction with the physical location of the calling and called-to party, are known. Absent such information, significant confusion and/or

arbitrage may be created with respect to the proper intercarrier treatment and compensation purpose or proper end user billing of such traffic. Unfortunately, there are instances where these telephone numbers get “masked,” inadvertently or intentionally, resulting in a loss of switched access revenues to the companies due to inaccurate or a lack of ANI information. This matter is further compounded when many LECs originate or terminate third party carrier traffic by using virtual NXX ANI or no ANI at all (generally referred to in the industry as “phantom traffic”).

In light of these issues and concerns, the Coalition suggests that the Commission address these matters by requiring the carriers to assign numbers based on the physical location of the ultimate end users. To ensure this result, carriers should be required to have appropriate, approved tariffs in place for Foreign Exchange service or Virtual NXX service for the use by only the “ultimate end users” and not for the third party carriers who may be offering call completion to their customers. Should such requirements not be met, the presumption should be affirmed by the Commission that the traffic to and from such third party carrier customers is subject to intrastate switched access charges and all the LECs should be required to declare such third party carrier customers by providing the ANIs used for such third party carrier customers to all the other LECs providing service in that LATA. Likewise, the Commission should also affirm the presumption that any terminating calls bearing no ANI information would also be subject to intrastate switched access charges.

While, at first blush, this affirmation may seem overly regulatory, Commission action consistent with such affirmation would, in the Coalition’s view, create incentives for proper and effective self-policing by all entities exchanging traffic over the public switched telephone network. This result – self-policing – is entirely consistent with the Commission’s apparent

objectives in this proceeding to rely upon market disciplines to affect the same results as regulation.

7. Have the FCC’s recent rule changes restored an appropriate balance for facilities-based provision or is there more we should and could do?

The Commission’s question regarding this issue relates to the FCC’s discussions and decisions regarding “unbundled network elements.” *See* Order at 19-20. Since each of the Coalition members is a “rural telephone company” under the Act (*see* 47 U.S.C. §153(37)), these decisions do not apply to the Coalition members. *See* 47 U.S.C. §251(f)(1). Accordingly, the Coalition reserve its right to respond to this issue to the extent necessary.

8. How has the playing field leveled for the state’s smaller incumbent carriers? In our original order, we implemented a modified version of the “joint proposal” originally offered by the New York State Telephone Association. That proposal envisioned a gradual change in the relationship among local carriers, under which the incumbents would all gradually transition to a common basis for exchange of traffic and intercarrier compensation that would be symmetrical with the state’s competitive local exchange carriers. How is the transition proceeding?

The Coalition members interpret the Commission’s discussion within the Order (*see* Order at 20) to relate to the intercarrier arrangements for the exchange of Extended Area Service (“EAS”) traffic. Consistent with Commission’s decisions, the phase out of existing EAS settlements between the affected Coalition members and Verizon is continuing and the implementation of EAS arrangements with other carriers operating within a Verizon exchange continues provided such arrangements have been requested. Accordingly, the Coalition submits that the transition is continuing as expected.

Similarly, with respect to toll services, the Coalition operates under a Designated Carrier Plan in which all intraLATA toll traffic belongs to Verizon. The Coalition members charge Verizon switched access rates for the exchange of intraLATA Toll traffic (which are filed by The

NY Access Pool). For all other intraLATA toll traffic, the Coalition members also assess these same charges to the end user's presubscribed toll providers. Accordingly, the Coalition members' relationship with all toll providers is the same as that they have with Verizon.

9. Where market dominance persists or emerges for bottleneck facilities or functions that are critical for fair competition, active government oversight must exist. Are the Commission's processes adequate to remedy potential bottleneck issues?

Where Commission intervention is required, the Coalition submits that the Commission's processes are adequate to address any issue that may be raised.

Respectfully submitted,

**The New York Coalition of
Rural Independent Telephone Companies**

/s/

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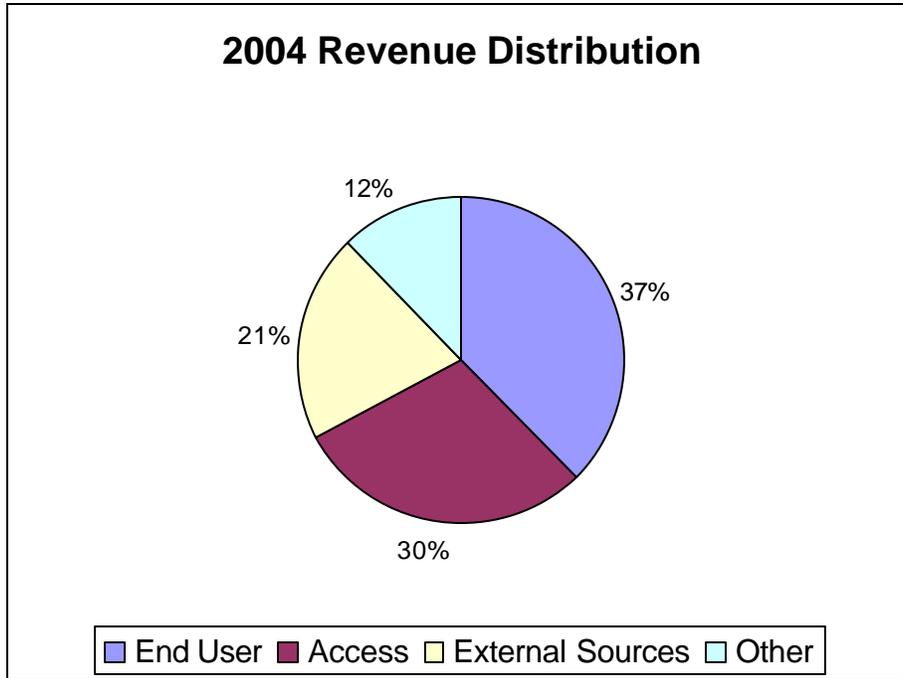
August 15, 2005

Attachment A

The New York Coalition of Rural Independent Telephone Companies

Armstrong Telephone Company – New York
Berkshire Telephone Corporation
Cassadaga Telephone Corporation
Champlain Telephone Company
Chautauqua & Erie Telephone Corporation
Chazy & Westport Telephone Corporation
Citizens Telephone Company of Hammond, NY
Crown Point Telephone Corporation
Delhi Telephone Company
Dunkirk & Fredonia Telephone Company
Empire Telephone Corporation
Germantown Telephone Company, Inc.
Hancock Telephone Company
Margaretville Telephone Company, Inc.
Middleburgh Telephone Company
Newport Telephone Company, Inc.
Nicholville Telephone Company
Oneida County Rural Telephone Company
Ontario Telephone Company, Inc.
Pattersonville Telephone Company
State Telephone Company
Taconic Telephone Corporation
TDS Telecom -- Deposit Telephone Company
TDS Telecom -- Edwards Telephone Company
TDS Telecom -- Oriskany Falls Telephone Company
TDS Telecom -- Port Byron Telephone Company
TDS Telecom -- Township Telephone Company
TDS Telecom -- Vernon Telephone Company
Trumansburg Telephone Company, Inc.

EXHIBIT – I



Revenue data for 27 responding Small Company Coalition members from a total of 31 Small Companies

USAC/NECA	22,713,728	18.9%
Access Pool	1,422,871	1.2%
EAS	548,763	0.5%
EXTERNAL SOURCES TOTAL	24,685,362	20.6%
Interstate Access	13,883,723	11.6%
Intrastate Access	21,592,082	18.0%
ACCESS TOTAL	35,475,805	29.6%
End User (Local)	32,707,279	27.3%
End User (SLC)	12,578,769	10.5%
END USER TOTAL	45,286,048	37.7%
Other	14,531,630	12.1%
TOTAL	119,978,845	

EXHIBIT – II

WIRELESS COMPETITION

# of Coalition Companies in the Group	# of Wireless Carriers Serving each Company Area
1	8
1	6
6	5
6	4
8	3
5	2

Based on information from the reporting 27 Companies of the Coalition Group.

EXHIBIT – III

CABLE BROADBAND AVAILABILITY

# of Coalition Companies in the Group	# of Cable Broadband Access Providers in each Company Area
3	3
8	2
14	1

Based on information from the reporting 25 Companies of the Coalition Group.

EXHIBIT - IV

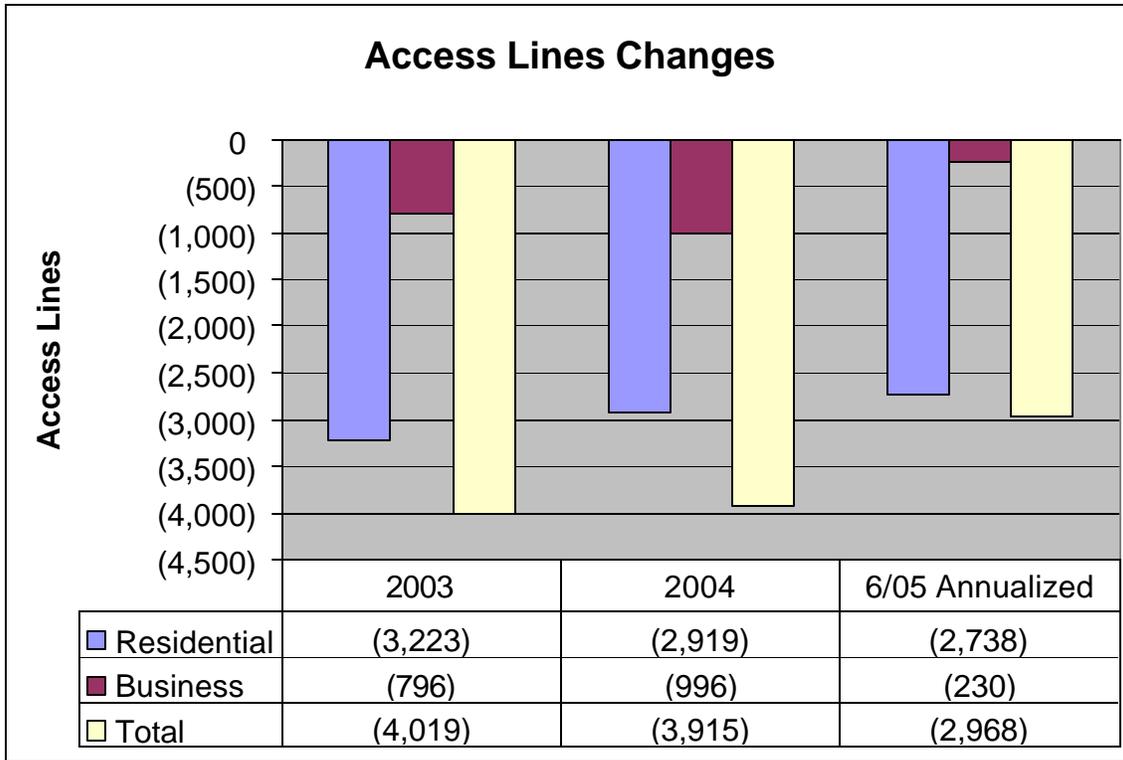
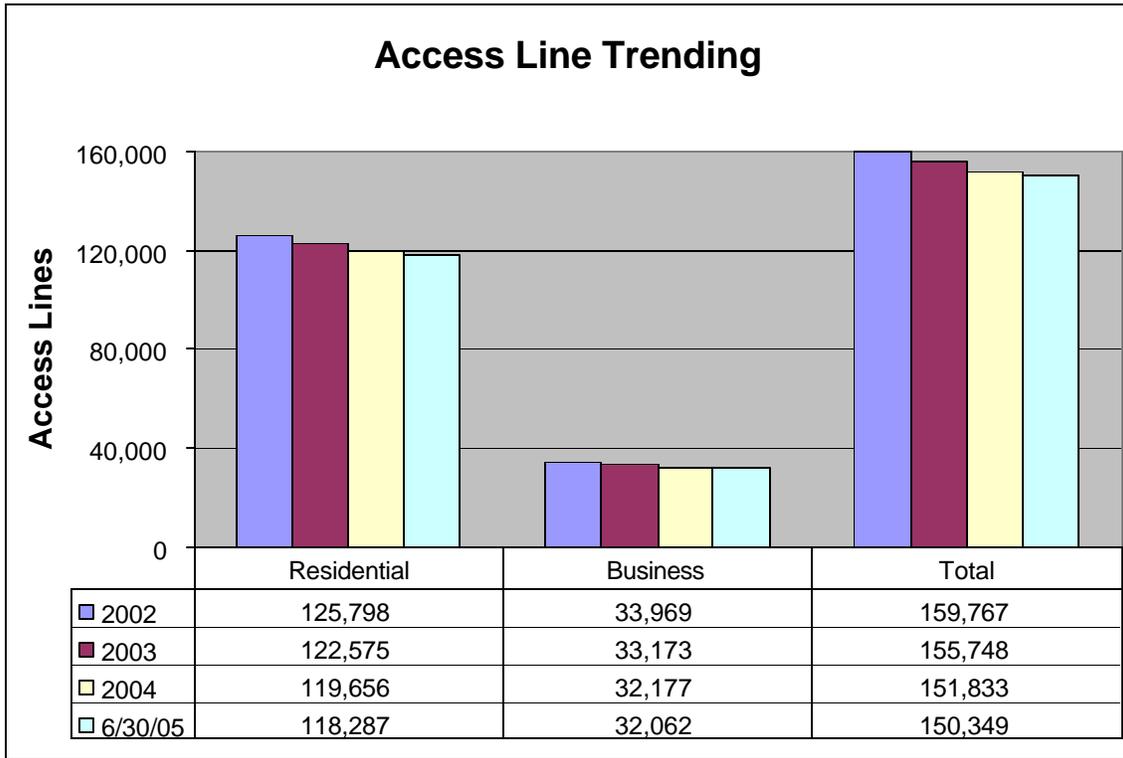
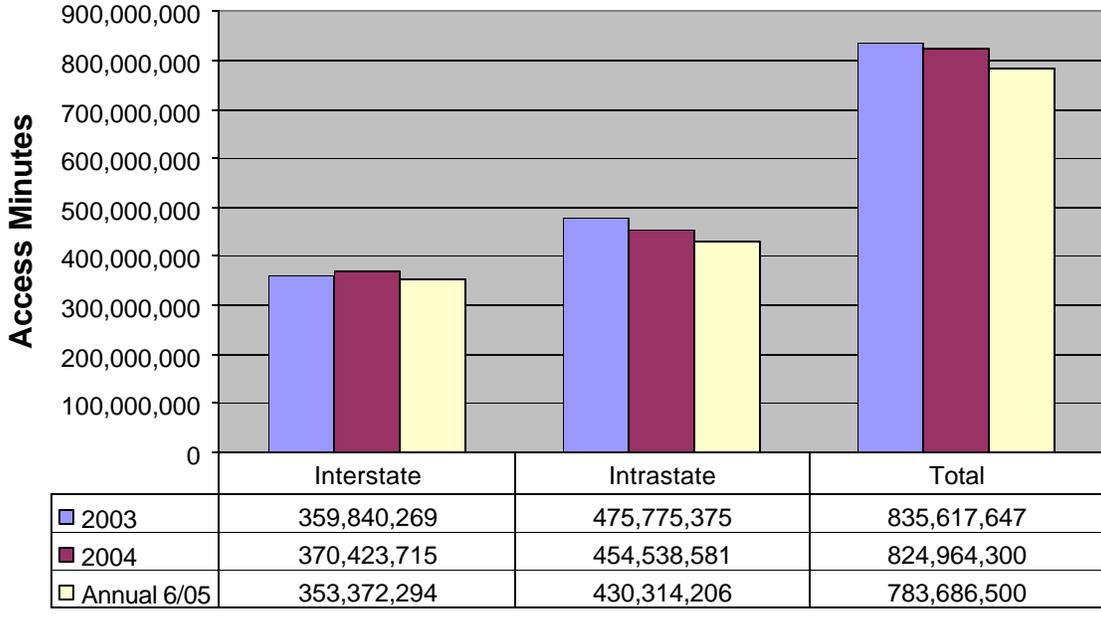


EXHIBIT - V

Access Minutes Trending



Access Minutes Changes

